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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1944.

No. 879.

ELBERT J. BURNS, Alias E. J. BURNS,
Petitioner,

vs.

THE STATE OF ALABAMA.

PETITION FOR REHEARING OF DENIAL OF PETITION FOR WRIT OF CERTIORARI.

G. ERNEST JONES,
Of Birmingham, Alabama,
Counsel for Petitioner.

RODERICK BEDDOW,
HORACE C. ALFORD,
All of Birmingham, Alabama,
Counsel for Petitioner.

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To the Chief Justice and Associate Justices of the Supreme Court of the United States:

Comes the above named petitioner, Elbert J. Burns, alias E. J. Burns, and presents this his petition for rehearing of the petition for certiorari in this cause.

I.

JURISDICTION.

The petition for certiorari was filed on January 29th, 1945, and was denied on February 5th, 1945. This petition is filed within less than twenty-five days thereafter, under Rule 33 (28 O. S. C. A., Sec. 354).

II.

REASONS FOR PETITION FOR REHEARING.

The basic question in this case is one that has never heretofore been presented to and decided by the Supreme Court of the United States.

1. On reanalysis, it is felt that neither the petition for Certiorari, nor the supporting brief, sufficiently emphasized, or pointed to with sufficient directions, the error of the Supreme Court of the State of Alabama, upon the principal question of Federal law involved, was the controlling factor in the case.

That error lay in the fact that this Court, in fact and in reality, in denying the petition for writ of certiorari, in effect, has ruled contrary to opinions of this Court, holding that, after indictment has been filed in a capital felony case, the defendant is entitled to be personally present at the trial, that is, at every stage of the trial, when his substantial rights may be affected, and if he be deprived of his life or liberty without being so present, such deprivation would be without that due process of law required by the Federal Constitution; and this right includes the right to be present when talesmen are examined on their voir dire as to qualifications and excuses.

Was Petitioner Present at Every Stage of His Trial?

Robert J. Foster, Chief Clerk to the Clerk of the Circuit Court, testified as follows:

> "Q. Where did the organization of this jury take place, in this room or where?
>
> A. Room 604, the jury room.
>
> Q. What is the number of this room in which you are testifying now?
>
> A. 617.

Q. Mr. Foster, this morning as you related, when the jury was organized around in Room 604 and certain jurors were excused by the court from service this week, was the defendant in this case or his counsel present at that time?

A. No, sir'' (Rec. pp. 104-7, incl.).

2. A correct ruling, in accordance with the former decisions of the Supreme Court of the United States on that question of general law, must have resulted in a different disposition of the case.

III.

THE CONTROLLING QUESTIONS.

The controlling questions therefore are:

(a) The trial court in entering the jury assembly room, in the absence of the defendant and his attorney in a capital felony case, examining jurors summonsed for jury service in the cause as to their qualifications and excuses; then selecting 24 men from those remaining and requiring the defendant, over his timely objection, to strike a jury from those selected by the Court at a time and place when neither defendant nor his attorney were personally present, deprived the defendant of his constitutional right to be present at every stage of the trial, after indictment filed, when his substantial rights are affected.

(b) A defendant in a capital felony case being convicted by a jury, selected by the trial court at a time and place when the defendant was not personally present, and sentenced to suffer the death penalty, deprived him of his life without due process of law and denied to him the equal protection of the law.

(c) The defendant being forced to strike a jury from 24 men selected by the trial court at a time and place when

the defendant was not personally present, deprived him of the constitutional right to a trial by an impartial jury of the State and District wherein the crime is alleged to have been committed.

IV.

But on that question, the affirmative holding of the Supreme Court of the State of Alabama, is in direct conflict with the applicable decisions of this Court.

V.

PUBLIC IMPORTANCE.

The public has an interest in the life and liberty of every human being, and to the extent no human being shall be deprived of his life and liberty without due process of law, nor denied the equal protection of the law.

VI.

The denial of the application for writ of certiorari to the Supreme Court of Alabama cannot be based upon a failure to present a Federal question. The case of Snyder v. Massachusetts, 291 U. S. 97, 78 L. Ed. 674, being a direct holding by the Supreme Court of the United States that the denial of the right of a defendant to be present at every stage of his trial is a denial of a right guaranteed by the Federal Constitution.

VII.

For the foregoing reasons, petitioner respectfully urges that a rehearing be granted; that upon further consideration the order of February 5th, 1945, denying the petition for writ of certiorari be revoked; and that the writ of certiorari issue.

And petitioner further respectfully shows that this question is not moot, the Governor of Alabama having reprieved this defendant by Executive Order postponing execution of this sentence until the 23rd day of March, 1945.

ELBERT J. BURNS,

By .....,
G. ERNEST JONES,
Birmingham, Ala.,
Counsel for Petitioner.

.....
RODERICK BEDDOW,

.....
HORACE C. ALFORD,
Birmingham, Ala.,
Of Counsel for Petitioner.

United States of America,
State of Alabama,
Jefferson County. } ss.

I, Horace C. Alford, of Counsel for the Petitioner, Elbert J. Burns, alias E. J. Burns, being duly sworn, certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

Horace C. Alford.

Sworn to and subscribed before me this the 28. day of February, 1945.

Foy M. Thompson,
Notary Public.

My commission expires 3-28-48.

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THE STATE OF ALABAMA.

BRIEF AND ARGUMENT

On Petition for Rehearing of Denial of Petition for Writ of Certiorari.

The former Mr. Chief Justice Hughes, in his able work on Federal procedure, says the granting of the writ of certiorari is purely a matter of sound judicial discretion of the United States Supreme Court; that upon petitions for certiorari to State Courts the United States Supreme Court is only concerned with Federal questions. He further says that many attorneys in the preparation of the petition and brief make the error of loading the brief down with argument of State questions, and that the United States Supreme Court is a very busy Court and that if briefs are loaded down with arguments, largely

upon State questions and matters, not within the jurisdiction of the United States Supreme Court, that Court may inadvertently overlook the Federal question, if there is any, and deny the writ.

We content ourselves here with presenting one basic Federal question in this case, and that is whether or not the constitutional rights of the petitioner has been invaded by the trial court entering the jury assembly room, in the absence of petitioner and his attorney, examining the talesmen summonsed in the case against petitioner, excusing a large number of them, and then selecting twenty-four men from those remaining and requiring petitioner to strike from that twenty-four in selecting a jury; and whether or not such conduct resulted in depriving defendant of his life and liberty without that due process of law which is the concept of justice. This is the basic question in this case. It was raised in the trial court. It was presented to the Supreme Court of Alabama on appeal in this cause by assignment of error and argument in brief, but the Supreme Court of Alabama, apparently, in its zeal to hold the Jefferson County jury law constitutional, has ignored this basic error, or has decided it was not in conformity with decisions of this Court.

The Federal question involved is whether the petitioner has been denied his constitutional rights, when the trial judge entered the jury assembly room at a time and place when the petitioner or his attorney was not present, examined the talesmen summonsed for jury duty in the cause, excused a large number of them, and selected from those remaining twenty-four talesmen, of the court's own choosing, and requiring the defendant to strike from that twenty-four talesmen in the selection of the jury by whom the defendant was tried; and whether, the defendant having been so convicted and sentenced to suffer the death penalty, his life and liberty has been deprived of him

according to that due process of law required by the Federal Constitution.

The testimony of Mr. Robert J. Foster (Rec. pp. 104 to 107, incl.) shows conclusively that the defendant or his attorney was not personally present when the trial court went into the jury assembly room, examined the talesmen whom had been summonsed for jury duty in the cause against this petitioner, excused a large number of them and selected from those remaining twenty-four men from which a jury was subsequently selected. The testimony of Mr. Foster further shows a copy of the venire was not served on the defendant and he had no knowledge of the identity of those drawn and no possible way for him to protect himself against a "stacked" or "handpicked" jury.

The crime charged against this petitioner was a very atrocious one and necessarily public feeling was high.

PROPOSITION OF LAW.

I.

"A defendant on trial in capital felony cases must be personally present at every stage of the trial after indictment filed when anything is done which may affect his substantial rights, and he cannot waive that right."

Hopt v. Utah, 110 U. S. 579, 25 L. Ed. 265;
Lewis v. United States, 146 U. S. 370, 36 L. Ed. 1011;
Lee v. State, 13 So. (2d) 583, 244 Ala. 401;
Ridder v. Commonwealth, 216 Ky. 220, 287 S. W. 704;
Percer v. State, 118 Tenn. 765, 103 S. W. 780;
State v. Hughes, 2 Ala. 102, 32 Am. Dec. 411;
Noell v. Commonwealth, 135 Va. 600, 115 S. E. 679, 30 ALR 1345;
23 C. J., Sec. 973;
Fina v. U. S., 46 Fed. (2d) 643;
Buckhalter v. N. Y., 319 U. S. 426, 87 L. Ed. 1493;
Powell v. Alabama, 287 U. S. 45, 77 L. Ed. 158;
Chambers v. Florida, 209 U. S. 227, 84 Law Ed. 716;
Ashcraft v. Tennessee, 64 Sup. Ct. Rep. 921, 322 U. S. 143;
Smallwood v. State, 235 Ala. 425, 179 So. 217;
Original Brief and Argument on Original Submission, pp. 29-37;
Snyder v. Massachusetts, 291 U. S. 97, 78 L. Ed. 674.

In the case of **Hopt v. Utah**, 110 U. S. 579, 25 L. Ed. 265, the United States Supreme Court held that a defendant on trial in a capital felony case must be personally present at the trial and the trial commences at least from the moment when the work of empaneling the jury begins; and if the defendant is deprived of his life or liberty without being personally present, such deprivation was without that due process of law required by the Federal Constitution.

Then, following the Hopt case, supra, the United States Supreme Court, in the case of **Lewis v. United States**, 146 U. S. 370, 36 L. Ed. 1011, reaffirmed what was said in the Hopt case, and used the following language:

> "Such being the relation which the citizen holds to the public, and the object of punishment for public wrongs, the legislature has deemed it essential to the protection of one whose life or liberty is involved in a prosecution for felony, that he shall be personally present at the trial, that is, at every stage of it, when his substantial rights may be affected by the proceedings against him. If he be deprived of his life or liberty without being present, such deprivation would be without that due process of law required by the Constitution."

In the case of **Snyder v. Massachusetts**, 291 U. S. 97, 78 L. Ed. 674, the United States Supreme Court held the jury viewing the scene of the homicide, when no evidence is taken, the personal presence of the defendant is not necessary, it not being any part of the trial. In that case, Mr. Justice Roberts wrote a very strong dissenting opinion which was concurred in by Mr. Justice Brandeis, Mr. Justice Sutherland and Mr. Justice Butler. Mr. Justice Roberts quoted from the Hopt case, supra, as follows:

> "Such being the relation which the citizen holds to the public, and the object of punishment for public wrongs, the legislature has deemed it essential to the protection of one whose life or liberty is involved in a prosecution for felony, that he shall be personally present at the trial, that is, at every stage of the trial when substantial rights may be affected by the proceedings against him. If he be deprived of his life or liberty without being so present, such deprivation would be without that due process of law required by the Constitution."

A jury is a component part of the Court in the trial of men charged with the commission of crime. Mr. Justice

Harlan said in the decision of the Lewis case, supra, the trial commences at least from the time when the work of empaneling a jury begins. This same language was used in the Hopt case, supra.

The empaneling of the jury in the present case actually began when the trial court entered the jury assembly room, examined the talesmen as to their qualifications, excused a large number of them, and selected twenty-four men from those left from which a jury was subsequently struck, and before whom petitioner was tried and convicted. The law is that the record must affirmatively show that the accused was personally present at every stage of the proceedings against him, and it has been held that where the record shows he was personally present upon arraignment, the presumption is that he was present throughout the trial unless the contrary is affirmatively shown. We submit the contrary is shown in this case, because the testimony of Mr. Robert J. Foster, chief clerk to the Clerk of the Circuit Court, who was present in the jury assembly room when the judge entered the jury assembly room, examined the talesmen on their voir dire, excused a number of them, and selected the twenty-four from which the jury was subsequently struck, testified positively that the defendant was not present when that proceeding took place (Rec. pp. 104-107).

Of course, the decisions of State Courts are not binding upon this Court, but in the case of **Lee v. State,** 13 So. (2d) 583, a case in which the verdict of the jury was rendered in the absence of the defendant, the Court of Appeals of Alabama held that the constitutional rights of the defendant had been invaded, or had been denied, citing the Hopt and Lewis cases, supra. That Court also cited the case of **Ridder v. Commonwealth,** 216 Ky. 220, 287 S. W. 704; **Percer v. State,** 118 Tenn. 765, 103 S. W. 780. In the Lee case, supra, the trial had concluded; nothing was to be done but for the jury to return the verdict—the

jury had been empaneled, had heard all of the testimony, the charge of the court, but the court says he was denied his constitutional rights basing its holding on the holding of this Honorable Court in the Hopt and Lewis cases, and, of course, citing others. The judgment in the Lee case, supra, was reversed by the Court of Appeals of Alabama, and reached the Supreme Court of Alabama by petition for writ of certiorari (244 Ala. 401, 13 So. [2d] 590), and the opinion of the Court was written by Mr. Justice Foster. He says in the opinion, among other things, that the defendant has the right to poll the jury to ascertain whether all of them agreed upon the verdict. He further says that the right of the defendant to be present when the verdict is returned by the jury is guaranteed by Section 6 of the Constitution of Alabama; that he may discuss questions of law and fact which may arise with the Court, and that he may examine the jury by the poll to ascertain if they assented, citing the case of State v. Hughes, 2 Ala. 102, 32 Am. Dec. 411. If it be important that the defendant in a capital felony case shall be personally present when the jury returns its verdict in open court, how much more important should it be that a defendant on trial for his life in a capital felony case should personally be present when the jury is empaneled, that is, when the empanelling of the jury begins? If a jury is selected who may be biased or prejudiced, it is certain that the defendant cannot have a fair and impartial trial. It may be said in reference to the Hopt case, supra, there was a mandatory statute in Utah which required that a defendant on trial in a capital felony case shall personally be present at the time of examination of talesmen by the triers of the Court. Alabama is a common law state and murder is a common law crime. Alabama has adopted the common law (Title 1, Section 3, Code of Alabama 1940), and at the common law, a defendant put on trial for murder, or any other capital offense, must be personally pres-

ent at every stage of the trial when his substantial rights may be affected. The Court of Appeals of Alabama, in the Lee case, supra, quotes with approval from the case of **Noell v. Commonwealth**, 135 Va. 600, 115 S. E. 679, 30 A. L. R. 1345, to the effect:

> "The public has an interest in every case involving the life or liberty of a citizen both in England and in this country, and it has long been recognized as a settled rule of the common law, based as well upon public policy as upon the interest of the accused, that his continuous presence from arraignment to sentence is an essential part of the process of law provided for his trial, and without which the courts have no jurisdiction to pronounce judgment upon him. Constitutional provisions and statutory enactments not in conflict with such provision may modify or abrogate this general rule, but in the absence of constitutional or statutory change—and there is none as to felony in Virginia (nor in Alabama)—conformity to the rule is essential to jurisdiction and the accused cannot waive it."

In 23 Corpus Juris Secundum, Section 973, the general rule is stated:

> "In the absence of a permissible waiver, see Section 974a infra, under constitutional or statutory provisions to that effect to the common law, an accused charged with a felony is entitled to be present, and, for a valid trial and conviction, must be present at every stage of the trial, or at least when any important step is taken."
>
> "While this rule is regarded in most jurisdictions as essential for the benefit of the accused, it has been held in other jurisdictions that the rule is for the benefit of the State as well as the accused, and that accused's presence during the trial is essential to the jurisdiction of the court."

The record must affirmatively show that the accused was personally present at the trial, and if the record shows

he was personally present at arraignment, the presumption is he was personally present at every stage of the trial thereafter, unless the contrary is shown by the record.

In this case, it is affirmatively shown by the testimony of Mr. Foster the accused was not personally present when the jury was interrogated upon voir dire when certain jurors were excused and twenty-four selected from those remaining from which a jury was selected.

In the case of **Fina v. U. S.**, 46 Fed. (2d) 643, the defendant was on trial for a felony. The jury was unable to agree and desired to ask the trial judge a question. In the absence of the defendant or his attorney, the trial judge allowed the jury to be brought into court and the judge answered their question. The Circuit Court of Appeals reversed the judgment of the trial court and said:

> **"We have no doubt but that it is the constitutional right of one accused of a felony to be present at every stage of the trial, because the trial by jury mentioned in our Constitution means a trial by jury according to the common law."**

And further that Court says:

> **"Again, the error here complained of is a denial to a defendant of his constitutional right, and the denial to a defendant on trial of his rights guaranteed to him by the Constitution is at all times deemed to be prejudicial. To prevent such rights from usurpation, the framers of our Constitution deemed them of such solemn importance in the doing of justice as to place their protection under the sheltering aegis of our organic law."**

It probably would not be amiss for us to tell this Honorable Court how juries are selected and empaneled in Jefferson County, Alabama. When the court is in session and engaged in the trial of jury cases, all jurors sum-

monsed for the week are assembled in a large jury assembly room and apart from the several court rooms. One of the judges goes into the jury assembly room and all jurors are sworn to answer such questions as may be propounded to them touching their qualifications, etc., and those who may be disqualified, or for any other cause, The excused. names of the remaining jurors are written or printed on small slips of paper and all the slips placed in a small jury box and securely locked. Each judge has a key to the box which is carried from one court room to another, and when a case is assigned to a judge for trial the jury box is brought into court, and in the presence of the parties and their attorneys, the judge draws twenty-four names from the jury box and the bailiff of the court is sent to the jury assembly room to bring them into court. The judge then tells the jury the nature of the case, the names of the parties, their attorneys, etc., asks the jurors a few preliminary questions touching their qualifications in the particular case and pronounces them qualified. When the court has pronounced the jurors qualified, he then says to the attorneys for the parties to begin to strike. Defendants charged with capital offenses, and with other offenses, never know the identity of jurors excused or the reason for them being excused. A trial judge has the right, if he sees fit, to excuse any number of jurors not in the presence of the defendant or his attorney, and without cause, and the defendant may never know anything of it.

On July 19th, 1943, the present case was the only one for trial in which a jury was necessary. There was no necessity for the small jury box being used. The trial judge entered the jury assembly room, excused a number of jurors and selected twenty-four from those remaining and had them brought into open court where the defendant and his attorney was present and required them to

strike from that twenty-four jurors. The record clearly shows the defendant objected to striking from the twenty-four jurors selected by the trial court, but his objection was overruled and he reserved an exception.

This case is unlike the case of **Buckhalter v. New York**, 319 U. S. 426, 87 L. Ed. 1493. In that case it was contended due process was denied by the court's ruling on challenges to certain jurors. This court held such rulings raised no question of due process of law. In this case the action of the court goes to the very root of the concepts of justice—the selection and empaneling of the jury. The trial court had the opportunity, if it saw fit, to give the defendant a "stacked" or "handpicked" jury. This Honorable Court does not know what went on in the jury assembly room, and neither does the defendant, because the defendant or his attorney was not present.

The United States Supreme Court in the Hopt and Lewis cases, Mr. Justice Roberts, in his able dissenting opinion in the Snyder case, supra, has held, if a party on trial in a capital felony case is deprived of his life or liberty, when he is not personally present at every stage of the trial, when his substantial rights may be affected, such deprivation is without that due process of law required by the Constitution. The U. S. Circuit Court of Appeals, in Fina v. United States, supra, has reaffirmed that particular doctrine.

In the case of **Powell v. Alabama**, 287 U. S. 45, 77 Law. Ed. 158, the United States Supreme Court held to appoint counsel for an indigent person charged with a capital felony offense and not allowed opportunity for adequate investigation and preparation if his life or liberty is deprived under such circumstances, such deprivation is not according to due process of law required by the Constitution.

Until the last few years, not much importance was given to a conviction in a capital case secured on a confession

coerced from the defendant, but in the case of **Chambers v. Florida**, 209 U. S. 227, 84 L. Ed. 716, and the case of **Ashcraft v. Tennessee**, 64 Sup. Ct. Rep. 921, 322 U. S. 143, and others, this court has held such judgment of conviction is not in accordance with due process of law. In discussing the term "due process of law" this Court has said:

> "As applied to a criminal trial, denial of due process is the failure to observe that fundamental fairness essential to the very concepts of justice."

In a case such as this one, the jury is the principal factor in the trial, and if the court enters the jury assembly room when neither the defendant nor his counsel is present, examines the jurors present, excuses a number of them, and selects twenty-four men from those remaining, and requires the defendant to strike from them in the selection of a jury, it is inconceivable how this court or any other court can say his constitutional rights have not been invaded; and if convicted, his life or liberty has been taken by due process of law, which satisfies the concepts of justice.

A judge in the Circuit Court of Jefferson County, Alabama, may exercise a personal favor or privilege, excuse as many jurors as he sees fit and select from those present twenty-four men of his own choosing. All of this may be done in the absence of the defendant to be tried for his life or liberty and there is nothing he can do about it.

We wish it understood we intend no personal reflection upon the moral integrity of the trial judge whose action is here under review. This affords a condition which is fundamentally dangerous and the Alabama Supreme Court has elected not to speak out upon it, although the question was put squarely up to that court by assignments of error and briefs in this case.

In Jefferson County, Alabama, a defendant to be tried upon indictment for a capital felony has no opportunity to

satisfy himself he will get a fair and impartial jury whether he is guilty or innocent. The trial judge has the right to enter the jury assembly room in the absence of the defendant or his attorney, excuse all jurors except twenty-four, which the trial judge may choose to select, and require the defendant to strike from those selected by the trial judge. Perhaps, if twelve of those selected by the trial judge are stricken off, twelve will be left who will convict no matter what the testimony may be.

Mr. Justice Black, in opinion written for the court, in **Chambers v. Florida**, supra, used the following language:

> "Thus, as assured against ancient evils, our Country, in order to preserve the 'Blessings of Liberty,' wrote into the basic law the requirement, among others, that the forfeiture of the lives, liberties or property of people accused of crime can only follow if procedural safeguards of due process has been obeyed."

Can it be said, if the trial court enters a jury assembly room, in the absence of the defendant and/or his counsel, and selects twenty-four jurors of his own choosing, twelve of whom are to be stricken off, leaving twelve, who probably may be hostile to the defendant, if the defendant is convicted and sentenced to suffer the penalty of death, that his life has been deprived of him by that due process of law which bears the concepts of justice? The murder in this case was a very atrocious crime and public sentiment naturally was high. Can it be said the procedural safeguards of due process of law has been obeyed and that the petitioner has had a fair trial? The petitioner was convicted upon the testimony of a self-confessed convict, who claimed to be an accessory, whom the record in this case shows has served several terms in the penitentiary. The record further shows that the petitioner did not testify in his own behalf.

In **Smallwood v. State**, 235 Ala. 425, 179 So. 217, the Alabama Supreme Court held:

> "In a capital case, refusal to have excuses from jury service heard and determined at time of the trial, in the presence of the accused, so that he may know the facts on which excuse is based, and be heard with respect thereto and excepts to the ruling, is reversible error."

That a Federal question is here presented is clearly held by both the minority and majority opinions in the case of Snyder v. Massachusetts, supra.

Conclusion.

It is conclusive to our minds the constitutional rights of this petitioner have been invaded and he has been convicted without that due process of law guaranteed by the Federal Constitution. It should not be a question with this Court whether the petitioner is guilty or innocent, but whether he has had the constitutional procedural "due process of law" guaranteed to him by the Federal Constitution. To our way of thinking, this Court has declared the law applicable to this case in the opinion of the Court in the Hopt and Lewis cases, supra, and in the dissenting opinion in the Snyder case, supra. The United States Circuit Court of Appeals in the Fina case, supra, has followed the Hopt and Lewis cases, and has declared the law as we believe applicable to this case. We have confidently relied upon the opinion in the Hopt and Lewis cases, supra, as well as in the Snyder and Fina cases, supra, both in the Alabama Supreme Court and in this Court.

We respectfully and sincerely submit this petition should be granted, the order entered on February 5th, 1945, denying the writ should be vacated and an order entered granting the writ.

Respectfully submitted,

.....

G. ERNEST JONES,
Counsel for Petitioner.

.....

RODERICK BEDDOW,

.....

HORACE C. ALFORD,
Of Counsel for Petitioner.

I, G. Ernest Jones, the undersigned attorney of record in the matter of Elbert J. Burns, alias E. J. Burns v. The State of Alabama, do hereby certify that I have served a copy of the foregoing petition for rehearing and brief and argument in support thereof upon Hon. Wm. N. McQueen, Acting Attorney General of the State of Alabama, and Attorney of Record for the State of Alabama, addressed to him at his proper post office address, at Montgomery, Alabama, by United States mail with sufficient postage to pay all mailing charges.

This the .... day of February, 1945.

.....

G. Ernest Jones,
Counsel for Petitioner.